



Handwritten initials: JFW, ATF

PTO/SB/21 (09-04)

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Total Number of Pages in This Submission

46

Application Number

10/629,971

Filing Date

July 20, 2003

First Named Inventor

Glenn Morris

Art Unit

2878

Examiner Name

Stephen K. Yam

Attorney Docket Number

44900-P001US

ENCLOSURES (Check all that apply)



Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)



Reply to Missing Parts/
Incomplete Application



Reply to Missing Parts
under 37 CFR 1.52 or 1.53



Drawing(s)



Licensing-related Papers



Petition



Petition to Convert to a
Provisional Application



Power of Attorney, Revocation



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Remarks



After Allowance Communication to TC



Appeal Communication to Board
of Appeals and Interferences



Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)



Proprietary Information



Status Letter



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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Winstead Sechrest & Minick P.C.

Signature

Printed name

Robert A. Voigt, Jr.

Date

April 24, 2006

Reg. No.

47,159

CERTIFICATE OF TRANSMISSION/MAILING

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Signature

Beatrice Zepeda

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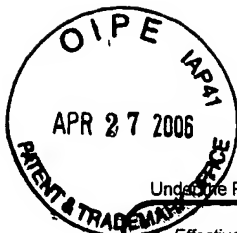
Beatrice Zepeda

Date

April 24, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (11-04)

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FEE TRANSMITTAL

For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)**250.00****Complete if Known**

Application Number	10/629,971
Filing Date	July 20, 2003
First Named Inventor	Glenn Morris
Examiner Name	Stephen K. Yam
Art Unit	2878
Attorney Docket No.	44900-P001US

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit Card ☐ Money Order☒ Deposit Account ☐ NoneDeposit
Account
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23-2426

Winstead Sechrest & Minick

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Fee Description	Fee (\$)	Small Entity Fee (\$)	Fee Paid(\$)
Utility Filing Fee	790	395	
Design Filing Fee	350	175	
Plant Filing Fee	550	275	
Reissue Filing Fee	790	395	
Provisional Filing Fee	160	80	

Subtotal (1) \$

FEE CALCULATION (continued)**2. EXTRA CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20	50	25
Each independent claim over 3	200	100
Multiple dependent claims	360	180
For Reissues, each claim over 20 and more than in the original patent	50	25
For Reissues, each independent claim more than in the original patent	200	100

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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_____ - 20 or HP = _____ x _____ = _____
HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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_____ - 3 or HP = _____ x _____ = _____
HP = highest number of independent claims paid for, if greater than 3

Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
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Subtotal (2) \$

3. OTHER FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)	Fee Paid(\$)
1-month extension of time	120	60	
2-month extension of time	450	225	
3-month extension of time	1,020	510	
4-month extension of time	1,590	795	
5-month extension of time	2,160	1,080	
Information disclosure stmt. fee	180	180	
37 CFR 1.17(q) processing fee	50	50	
Non-English specification	130	130	
Notice of Appeal	500	250	
Filing a brief in support of appeal	500	250	250.00
Request for oral hearing	1,000	500	
Other:			

Subtotal (3) \$ 250.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	47.159	Telephone	512.370.2832
Name (Print/Type)	Robert A. Voigt, Jr.			Date	April 24, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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44900-P001US

PATENT

- 1 -

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:	/
Glenn Morris	:	Yam, Stephen K.	
	:		
Serial No.: 10/629,971	:	Group Art Unit: 2878	
	:		
Filing Date: July 20, 2003	:		
	:		
Title: LASER LIGHT	:		
ACTUATION SYSTEM	:		

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is Glenn Morris.

CERTIFICATION UNDER 37 C.F.R. §1.8

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Beatrice Zepeda
Signature

04/28/2006 BABRAHAI 00000015 10629971

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250.00 OP

Beatrice Zepeda
(Printed name of person certifying)

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant, Appellant's legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-18 are pending in the Application. Claims 1-18 stand rejected. Claims 1-18 are appealed.

IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendments following receipt of the final rejection with a mailing date of December 20, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment of the present invention, a laser light actuation system for remotely and selectively actuating a function of a known apparatus may comprise a laser module adapted to produce a known laser light signal suitable for transmission over a long distance. Specification, page 6, lines 11-25; Specification, page 8, lines 3-12; Figure 2, element 22. The system may further comprise a receiver module adapted to receive and detect the known laser light signal and selectively produce an actuation signal in response to the known laser light signal to selectively actuate such an apparatus, the receiver module further comprising a timer operatively associated with the receiver module to selectively limit the time of actuation of such an apparatus in response to the laser light signal. Specification, 7, line – page 8, line 3; Figure 2, element 26.

In another embodiment, a laser light actuation system for remotely and

selectively actuating a function of a known electromechanical gate, the system comprising: a laser module adapted to produce a known laser light signal suitable for transmission over a long distance. Specification, page 6, lines 11-25; Figure 2, element 22. The system may further comprise a laser receiver module adapted to receive and detect the known laser light signal and selectively produce an actuation signal in response to the known laser light signal to selectively actuate such an electromechanical gate operatively associated with the laser receiver module and adapted to be selectively actuated in response to the detection of the known laser light signal by the laser receiver module, where the laser receiver module may be adapted to be positioned in use in a selectively concealed location known to a user. Specification, 7, line – page 8, line 12; Figure 2, element 26; Figure 4, element 38.

In another embodiment, a laser light actuation method for remotely and selectively actuating a function of a known apparatus, the method comprising the step of producing a known laser light signal suitable for transmission over a long distance. Specification, page 6, lines 11-25; Specification, page 8, lines 17-21; Figure 2, element 22; Figure 6, step 40. The method may further comprise receiving the known laser light signal. Specification, page 7, lines 11-17. The method may further comprise detecting the known laser light signal. Specification, page 8, lines 17-21; Figure 6, step 42. The method may further comprise producing an actuation signal to actuate such an apparatus selectively in response to the step of detecting the known laser light signal. Specification, page 7, line 24 – page 8, line 2; Specification, page 8, lines 17-21; Figure 6, step 44. The method may further comprise limiting the time of actuation of such an apparatus selectively in response to the laser light signal. Specification, page 7, line 24 – page 8, line 2; Specification, page 8, lines 17-21; Figure 6, step 46.

In another embodiment, a laser light actuation method for remotely and selectively actuating a function of a known electromechanical gate, the method

comprising the step of producing a known laser light signal suitable for transmission over a long distance. Specification, page 6, lines 11-25; Specification, page 8, lines 17-21; Figure 2, element 22; Figure 6, step 40. The method may further comprise receiving the known laser light signal at a selectively concealed location known to a user. Specification, page 7, lines 11-17; Specification, page 8, lines 3-12. The method may further comprise detecting the known laser light signal. Specification, page 8, lines 17-21; Figure 6, step 42. The method may further comprise producing an actuation signal to actuate such an electromechanical gate selectively in response to the step of detecting the known laser light signal. Specification, page 7, line 24 – page 8, line 12; Specification, page 8, lines 17-21; Figure 4, element 38; Figure 6, step 44. The method may further comprise actuating the electromechanical gate selectively in response to the step of producing an actuation signal. Specification, page 8, lines 3-12; Figure 4, element 38.

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 and 10 stand rejected under 35 U.S.C. §102(e) as being anticipated by Zak (U.S. Patent No. 6,690,003). Claims 2 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Appellant's Background. Claims 3 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Teremy et al. (U.S. Patent No. 5,541,695) (hereinafter "Teremy"). Claims 4-6 and 13-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Teremy and in further view of Schwartz (U.S. Patent No. 5,079,646). Claims 7 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Teetzel (U.S. Patent No. 5,526,749). Claims 8, 9, 17 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kaje (U.S. Publication No. 2003/0122665).

VII. ARGUMENTA. Claims 1 and 10 are not anticipated by Zak.

The Examiner has rejected claims 1 and 10 under 35 U.S.C. §102(e) as being anticipated by Zak (U.S. Patent No. 6,690,003). Appellant respectfully traverses these rejections for at least the reasons stated below.

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P. §2131.

Appellant respectfully asserts that Zak does not disclose "the receiver module further comprising a timer operatively associated with the receiver module to selectively limit the time of actuation of such an apparatus in response to the laser light signal" as recited in claim 1 and similarly in claim 10. The Examiner cites column 3, lines 17-21 of Zak as disclosing the above-cited claim limitation. Office Action (12/20/2005), page 2. The Examiner further cites element 30 of Zak (power relay) as disclosing a timer. Office Action (12/20/2005), page 2. Appellant respectfully traverses and asserts that Zak instead discloses that the power relay 30 can be one or more electromechanical relays, or can include a triac-based electronic relay circuit, for example. Column 3, lines 10-12. Zak further discloses that in this embodiment, the switch actuator circuit is a toggle-type flip flop, which changes state (i.e., between "on" and "off") each time it receives a signal from the photosensor 24. Column 3, lines 12-15. Zak further discloses that a simple filter, an input delay circuit or an anti-chatter circuit can prevent unwanted multiple actuations. Column 3, lines 15-17. Zak further discloses that a monostable multivibrator¹ can be used to

¹ A monostable multivibrator is an electronic circuit that has two states, only one of which is stable. The circuit can be pushed into the unstable state by a control input. The time spend in the unstable state is usually controlled by the charging (or discharging) of a capacitor through a resistor. See definition of monostable multivibrator at wikipedia.org.

achieve a timed ON actuation, at the end of which the load device is automatically switched OFF. Column 3, lines 17-20. Zak further discloses that this can also be used for a timed OFF or timed interrupt. Column 3, lines 20-21. Hence, Zak discloses using a monostable multivibrator for preventing unwanted multiple actuations. While Zak teaches that a monostable multivibrator may be used to achieve a timed ON actuation, this is not the same as selectively limiting the time of actuation. Further, the power relay of Zak (Examiner asserts that power relay 30 discloses a timer) does not selectively limit the time of actuation. Neither is there any language in the cited passage that discloses selectively limiting the time of actuation of an apparatus in response to a laser light signal. Thus, Zak does not disclose all of the limitations of claims 1 and 10, and thus Zak does not anticipate claims 1 and 10. M.P.E.P. §2131.

In response to Appellant's above argument, the Examiner states:

Thus, by Examiner's interpretation of the recited limitation, the laser light signal is the selection mechanism for selecting to limit the time of actuation of such an apparatus. Office Action (12/20/2005), page 8.

Appellant respectfully asserts that the selection mechanism is not the laser light signal as asserted by the Examiner. Instead, as recited in claims 1 and 10, the receiver module includes a timer operatively associated with the receiver module to selectively limit the time of actuation of such an apparatus in response to the laser light signal. Hence, as recited in claims 1 and 10, it is the timer in the receiver module that selectively limits the time of actuation which is performed in response to the laser light signal. Thus, Zak does not disclose all of the limitations of claims 1 and 10, and thus Zak does not anticipate claims 1 and 10. M.P.E.P. §2131.

B. Claims 2 and 11 are patentable over Zak in view of Appellant's Background.

The Examiner has rejected claims 2 and 11 under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Appellant's Background. Office Action

(12/20/2005), page 3. Appellant respectfully traverses for at least the reasons stated below.

1. Claims 2 and 11 are patentable for at least the reasons that claims 1 and 10, respectively, are patentable.

Claims 2 and 11 recite the combinations of features of claims 1 and 10, respectively, and hence are patentable over Zak in view of Appellant's Background for at least the reasons that claims 1 and 10 are not anticipated by Zak as discussed above in Section A.

2. Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 2 and 11.

Most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner

relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Zak does not teach an electromechanical feeder operatively associated with the receiver module and adapted to be selectively actuated to release feed in response to detection of the known laser light signal by the receiver module, as recited in claim 2 and similarly in claim 11. Office Action (12/20/2005), page 3. The Examiner's motivation for modifying Zak with Appellant's Background to include the above-cited claim limitation is "to provide remote control of devices in an agricultural environment." Office Action (12/20/2005), page 3. In response to Appellant's request for the Examiner to specify a source of motivation, the Examiner simply states that it "is well known to one of ordinary skill in the art." Office Action (12/20/2005), page 9. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

While the source of motivation may be found from the knowledge of one of ordinary skill in the art, the Examiner is still required to provide evidence of such knowledge. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). That is, the Examiner must provide evidence that one of ordinary skill in the art would modify Zak to include an electromechanical feeder operatively associated with the receiver module and adapted to be selectively actuated to release feed in response to detection of the known laser light signal by the receiver module in order to provide remote control of devices in an agricultural environment. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2 and 11. *Id.*

3. Examiner's motivation appears to have been gleaned from Appellant's disclosure.

The Examiner's motivation ("provide remote control of devices in an agricultural environment") appears to have been gleaned from Appellant's disclosure, such as in paragraph [0004] of Appellant's Specification. Any judgment on obviousness must not include knowledge gleaned only from Appellant's disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). The Examiner asserts that the motivation is from knowledge of one of ordinary skill in the art but the Examiner does not specifically identify any evidence to support the assertion that the motivation is from knowledge of one of ordinary skill in the art. In fact, the motivation appears to directly come from Appellant's disclosure as stated above. The Examiner asserts that the Examiner's motivation is not entirely from Appellant's Specification. Office Action (12/20/2005), page 10. However, the Examiner has not provided any evidence that the motivation of "providing remote control of devices in an agricultural environment" is gleaned from a source other than from Appellant's disclosure. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 2 and 11. M.P.E.P. §2145.

C. Claims 3 and 12 are patentable over Zak in view of Teremy.

The Examiner has rejected claims 3 and 12 under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Teremy. Office Action (12/20/2005), page 4. Appellant respectfully traverses for at least the reasons stated below.

1. Claims 3 and 12 are patentable for at least the reasons that claims 1 and 10, respectively, are patentable.

Claims 3 and 12 recite the combinations of features of claims 1 and 10, respectively, and hence are patentable over Zak in view of Teremy for at least the reasons that claims 1 and 10 are not anticipated by Zak as discussed above in Section A.

2. Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 3 and 12.

As stated above, most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Zak does not teach a laser module adapted to produce a known, sparsely modulated laser light signal, as recited in claim 3 and similarly in claim 12. Office Action (12/20/2005), page 4. The Examiner modifies Zak with Teremy to include the above-cited claim limitation. Office Action (12/20/2005), page 4. The Examiner's motivation for modifying Zak with Teremy to include the above-cited claim limitation is "to provide multiple control signal types for each device to provide additional control of functionality, as taught by Teremy et al. (see Col. 2, line 64 to Col. 3, line 7, Col. 3, line 55 to Col. 4, line 12)." Office Action (12/20/2005), page 4. Hence, the Examiner is asserting that the motivation to

modify Zak to include the above-cited claim limitation is found at column 2, line 64 to column 3, line 7; and column 3, line 55 to column 4, line 12 of Teremy. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner's motivation ("to provide multiple control signal types for each device to provide additional control of functionality") does not provide reasons, as discussed further below, that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Zak to include the claim limitation of claims 3 and 12. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 3 and 12. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Zak addresses the problem of having a remote operator which is highly reliable and simple to use, and which has a strictly local character. Column 1, lines 48-50. Zak further teaches that there is a need for the remote operator to be free from problems that may arise from RF interference or other interference, and can be used for even simple "on"-"off" applications for devices in close proximity to one another. Column 1, lines 52-56. Zak further teaches these problems are overcome by having a remote operator include a laser-actuated photo switch. Abstract. The laser-actuated photo switch includes a photosensor, which is sensitive to the particular wavelength(s) that characterize the laser beam, and preferably there is a dark filter, that admits only that or those specific wavelength(s), and shields the photosensor from stray ambient radiation so there is no false triggering. Column 3, lines 1-7. The laser-actuated photo switch further includes a switch actuator circuit which is actuated or triggered by the photosensor and has an output connected to a power relay circuit. Column 3, lines 7-10. Zak further teaches activating a lamp. Column 3, lines 48-65.

As stated above, the Examiner cites column 2, line 64 to column. 3, line 7; and column 3, line 55 to column 4, line 12 of Teremy as providing the motivation to modify Zak to include the above-cited claim limitation. Office Action (12/20/2005), page 4. Teremy teaches having a relatively bright laser beam which is useful in aiming the remote controller (column 3, lines 55-67) as well as diminishing the brightness of the laser beam (column 4, lines 1-12). Hence, the Examiner's cited motivation teaches controlling the brightness of a laser beam.

There is no motivation though for modifying Zak to control the brightness of a laser beam. There is no need to modify Zak to change the brightness of a laser beam, such as a laser beam used to activate a lamp. Zak is only interested in activating a remote device, such as a lamp. Whether the brightness of a laser beam may be changed is immaterial to the purpose or goal of Zak, which is to remotely activate a device that is free from problems that may arise from RF interference or other interference. The Examiner must provide objective evidence as to why one of ordinary skill in the art would modify Zak to include the above-cited claim limitation. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner has not provided such objective evidence. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 3 and 12. *Id.*

In response to Appellant's above argument, the Examiner states:

As applied to Zak, this provides additional functionality that would have been obvious to one of ordinary skill in the art, such as different operating states for a lamp (different brightness settings) or a ceiling fan (different speed settings), both devices which are disclosed by Zak (see Col. 2, lines 33-36). Examiner asserts that providing adjustability for a system is obvious to one of ordinary skill in the art, and as it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 U.S.P.Q. 284 (C.C.P.A. 1954). Office Action (12/20/2005), page 10.

Appellant respectfully traverses. Zak simply teaches that the remote operator can be integrated into the housing or body of the load device, e.g., into a ceiling fan, wall switch, table lamp, or any other device in need of remote controlled operation. Column 2, lines 33-36. The Examiner has not provided any evidence that one of ordinary skill in the art would be motivated to modify Zak, which simply teaches integrating the housing or body of a load device into a ceiling fan or a table lamp, to have different brightness settings for a lamp or to have different speed settings for a ceiling fan. That is, the Examiner has not provided any reasons as to why one of ordinary skill in the art would modify Zak to have different brightness settings for a lamp or to have different speed settings for a ceiling fan. Further, claims 3 and 12 do not recite having different brightness settings for a lamp or having different speed settings for a ceiling fan. Instead, claims 3 and 12 recite a laser module adapted to produce a known, sparsely modulated laser light signal. The Examiner has not provided reasons as to why one skilled in the art would modify Zak to include a laser module adapted to produce a known, sparsely modulated laser light signal. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 3 and 12. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, in *In re Stevens*, the claims were directed to a handle for a fishing rod wherein the handle has a longitudinally adjustable finger hook, and the hand grip of the handle connects with the body portion by means of a universal joint. *In re Stevens*, 101 U.S.P.Q. 284, 284 (C.C.P.A. 1954). The court in *In re Stevens* held that adjustability, where needed is not a patentable advanced, and because there was an art-recognized need for adjustment in a fishing rod, the substitution of a universal joint for the single pivot of the prior art would have been obvious. *Id.* at 285. The Examiner though has not shown that there is an art-recognized need for a laser module adapted to produce a known, sparsely modulated laser light signal, as recited in claim 3 and similarly in claim 12. Hence, the citing of *In re Stevens* does not relieve the Examiner's duty to provide objective evidence as to why one of ordinary

skill in the art would modify Zak to include the above-cited claim limitation. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner has not provided such objective evidence. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 3 and 12. *Id.*

Further, Appellant notes that *In re Stevens*, upon which the Examiner relies, precedes *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). Accordingly, the holdings of *Graham* may overrule the holdings of *In re Jones*.

D. Claims 4-6 and 13-15 are patentable over Zak in view of Teremy and in further view of Schwartz.

The Examiner has rejected claims 4-6 and 13-15 under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Teremy and in further view of Schwartz. Office Action (12/20/2005), page 4. Appellant respectfully traverses for at least the reasons stated below.

1. Claims 4 and 13 are patentable for at least the reasons that claims 1 and 10, respectively, are patentable.

Claims 4 and 13 recite the combinations of features of claims 1 and 10, respectively, and hence are patentable over Zak in view of Teremy and in further view of Schwartz for at least the reasons that claims 1 and 10 are not anticipated by Zak as discussed above in Section A.

Claims 5 and 14 recite the combinations of features of claims 2 and 11, respectively, and hence are patentable over Zak in view of Teremy and in further view of Schwartz for at least the reasons that claims 2 and 11 are patentable over Zak in view of Appellant's Background as discussed above in Section B.

Claims 6 and 15 recite the combinations of features of claims 3 and 12, respectively, and hence are patentable over Zak in view of Teremy and in further view

of Schwartz for at least the reasons that claims 3 and 12 are patentable over Zak in view of Teremy as discussed above in Section C.

2. Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 4-6 and 13-15.

As stated above, most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See *Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. See *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Zak and Teremy do not teach a telescopic sight operatively associated with the laser module to accommodate selective directing of the known laser light signal though use of the telescopic sight, as recited in claims 4-6, and similarly in claims 13-15. Office Action (12/20/2005), page 4. The Examiner

modifies Zak and Teremy with Schwartz to include the above-cited claim limitation. Office Action (12/20/2005), pages 4-5. The Examiner's motivation for modifying Zak and Teremy with Schwartz to include the above-cited claim limitation is "to increase the accuracy and range for operating the laser module by an operator." Office Action (12/20/2005), page 5. In response to Appellant's request for the Examiner to specify a source of motivation, the Examiner simply states that it "is well known to one of ordinary skill in the art." Office Action (12/20/2005), page 11. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

While the source of motivation may be found from the knowledge of one of ordinary skill in the art, the Examiner is still required to provide evidence of such knowledge. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). That is, the Examiner must provide evidence that one of ordinary skill in the art would modify Zak to include a telescopic sight operatively associated with the laser module to accommodate selective directing of the known laser light signal through use of the telescopic sight in order to increase the accuracy and range for operating the laser module by an operator. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 4-6 and 13-15. *Id.*

Further, the Examiner's motivation does not address as to why one of ordinary skill in the art would modify Zak to include the above-cited claim limitation. As stated above, Zak addresses the problem of having a remote operator which is highly reliable and simple to use, and which has a strictly local character. Column 1, lines 48-50. Zak further teaches that there is a need for the remote operator to be free from problems that may arise from RF interference or other interference, and can be used for even simple "on"-"off" applications for devices in close proximity to one another. Column 1, lines 52-56. Zak further teaches these problems are overcome by having a

remote operator include a laser-actuated photo switch. Abstract. The laser-actuated photo switch includes a photosensor, which is sensitive to the particular wavelength(s) that characterize the laser beam, and preferably there is a dark filter, that admits only that or those specific wavelength(s), and shields the photosensor from stray ambient radiation so there is no false triggering. Column 3, lines 1-7. The laser-actuated photo switch further includes a switch actuator circuit which is actuated or triggered by the photosensor and has an output connected to a power relay circuit. Column 3, lines 7-10. Zak further teaches activating a lamp. Column 3, lines 48-65.

The Examiner's motivation is to increase the accuracy and range for operating the laser module by an operator. Office Action (12/20/2005), page 5. The Examiner's motivation does not address as to why one of ordinary skill in the art would modify Zak to include the above-cited claim limitation. There is no discussion in Zak of there being any problems related to the lack of accuracy or range for operating the laser module. Instead, Zak is interested in remotely activating a device that is free from problems that may arise from RF interference or other interference. Increasing the accuracy or range is immaterial to overcoming these problems. The Examiner must provide objective evidence as to why one of ordinary skill in the art would modify Zak to include the above-cited claim limitation. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner has not provided such objective evidence. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4-6 and 13-15. *Id.*

The Examiner further states in response to Appellant's request for the Examiner to specify a source of motivation:

Examiner asserts that Schwartz teaches the aiming of a laser source towards a target facilitated by an optical telescope (see Col. 2, lines 2-6). As applied to Zak, this improvement provides for the accurate aiming of the laser source. Examiner asserts that providing optical means for assisting in the aiming towards a target is obvious to one of ordinary skill in the art (for example, a typical scope on a rifle). Thus,

Examiner asserts the motivation for combining Schwartz is sufficient in both source and scope, and the rejection of claims 4-6 and 13-15 under 35 U.S.C. §103(a) is proper. Office Action (12/20/2005), page 11.

Appellant respectfully traverses. Column 2, lines 2-6 of Schwartz teaches that arrangements can be made for permitting conventional optical use of the telescope sight alternately with, or simultaneously with, utilization of the laser light source projected through the telescope sight toward the target. This was stated in connection with Schwartz's purpose which is to provide an optically reliable mount which is reasonably low cost and which is universal in application for use to couple devices mentioned in co-pending applications with other optical or electro-optical components. Column 2, lines 28-33. The citing of column 2, lines 2-6 of Schwartz does not provide reasons as to why one of ordinary skill in the art would modify Zak, which overcomes the problem of having a remote operator which is highly reliable and simple to use, and which has a strictly local character (column 1, lines 48-50), to have a telescopic sight operatively associated with the laser module to accommodate selective directing of the known laser light signal through use of the telescopic sight (missing claim limitation). The Examiner has not explained how making arrangements for permitting conventional optical use of the telescope sight alternately with, or simultaneously with, utilization of the laser light source projected through the telescope sight toward the target, would cause one skilled in the art to modify Zak to have a telescopic sight operatively associated with the laser module to accommodate selective directing of the known laser light signal through use of the telescopic sight. The Examiner must provide objective evidence in modifying Zak to include the missing limitation of claims 4-6 and 13-15. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness in rejecting claims 4-6 and 13-15. *Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4-6 and 13-15. *Id.*

3. Examiner's motivation appears to have been gleaned from Appellant's disclosure.

The Examiner's motivation ("to increase the accuracy and range for operating the laser module by an operator") appears to have been gleaned from Appellant's disclosure, such as in paragraph [0040] of Appellant's Specification. Any judgment on obviousness must not include knowledge gleaned only from Appellant's disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). The Examiner asserts that the motivation is from knowledge of one of ordinary skill in the art but the Examiner does not specifically identify any evidence to support the assertion that the motivation is from knowledge of one of ordinary skill in the art. In fact, the motivation appears to directly come from Appellant's disclosure as stated above. The Examiner has not provided any evidence that the motivation of "increasing the accuracy and range for operating the laser module by an operator" is gleaned from a source other than from Appellant's disclosure. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4-6 and 13-15. M.P.E.P. §2145.

4. Examiner relies on a reference under 35 U.S.C. §103 that is not analogous prior art.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. M.P.E.P. §2143.01. In order to rely on a reference as a basis for rejection under 35 U.S.C. §103(a), the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992). The Examiner cites the Zak, Teremy and Schwartz references in his rejection of claims 4-6 and 13-15 under 35 U.S.C. §103(a). The Schwartz reference addresses the problem of providing an optically reliable mount which is of reasonably low cost

and which is universal in application for use to couple devices of the type discloses in the mentioned co-pending application with other optical or electro-optical components. Column 2, lines 28-33. Appellant, on the other hand, addresses the problem of providing a remote laser actuation system that accommodates controlled duration of actuation of the subject device, e.g., feeder. Column 3, lines 18-25. Hence, the Schwartz reference is not in the same field as Appellant's endeavor and is not reasonably pertinent to solving the problem of providing a remote laser actuation system that accommodates controlled duration of actuation of the subject device, e.g., feeder. As a result, the Schwartz reference is not an analogous prior art and the Examiner has not established a *prima facie* case of obviousness in rejecting claims 4-6 and 13-15. M.P.E.P. §2141.01; 2143.01.

E. Claims 7 and 16 are patentable being over Zak in view of Teetzel.

The Examiner has rejected claims 7 and 16 under 35 U.S.C. §103(a) as being unpatentable over Zak in view of Teetzel. Office Action (12/20/2005), page 5. Appellant respectfully traverses for at least the reasons stated below.

1. Claims 7 and 16 are patentable for at least the reasons that claims 1 and 10, respectively, are patentable.

Claims 7 and 16 recite the combinations of features of claims 1 and 10, respectively, and hence are patentable over Zak in view of Teetzel and in further view of Schwartz for at least the reasons that claims 1 and 10 are not anticipated by Zak as discussed above in Section A.

2. Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 7 and 16.

As stated above, most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in

the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Zak does not teach a detonator operatively associated with the receiver module and adapted to be selectively actuated to detonate in response to detection of the known laser light signal by the receiver module, as recited in claim 7 and similarly in claim 16. Office Action (12/20/2005), page 5. The Examiner modifies Zak and Teetzel to include the above-cited claim limitation. Office Action (12/20/2005), page 5. The Examiner's motivation for modifying Zak with Teetzel to include the above-cited claim limitation is "to provide remote actuation of an explosive device for accurate detonation." Office Action (12/20/2005), page 6. In response to Appellant's request for the Examiner to specify a source of motivation, the Examiner simply states that it "is well known to one of ordinary skill in the art." Office Action (12/20/2005), page 11. The Examiner's

motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

While the source of motivation may be found from the knowledge of one of ordinary skill in the art, the Examiner is still required to provide evidence of such knowledge. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). That is, the Examiner must provide evidence that one of ordinary skill in the art would modify Zak to have a detonator operatively associated with the receiver module and adapted to be selectively actuated to detonate in response to detection of the known laser light signal by the receiver module. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 7 and 16. *Id.*

Further, the Examiner's motivation ("to provide remote actuation of an explosive device for accurate detonation") does not provide reasons, as discussed further below, that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Zak to include the claim limitation of claims 7 and 16. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 7 and 16. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

As stated above, Zak addresses the problem of having a remote operator which is highly reliable and simple to use, and which has a strictly local character. Column 1, lines 48-50. Zak further teaches that there is a need for the remote operator to be free from problems that may arise from RF interference or other interference, and can be used for even simple "on"-"off" applications for devices in close proximity to one another. Column 1, lines 52-56. Zak further teaches these problems are overcome by having a remote operator include a laser-actuated photo switch. Abstract. The laser-actuated photo switch includes a photosensor, which is

sensitive to the particular wavelength(s) that characterize the laser beam, and preferably there is a dark filter, that admits only that or those specific wavelength(s), and shields the photosensor from stray ambient radiation so there is no false triggering. Column 3, lines 1-7. The laser-actuated photo switch further includes a switch actuator circuit which is actuated or triggered by the photosensor and has an output connected to a power relay circuit. Column 3, lines 7-10. Zak further teaches activating a lamp or a ceiling fan. Abstract.

The Examiner's motivation is to provide remote actuation of an explosive device for accurate detonation. Office Action (12/20/2005), page 5. The Examiner's motivation does not address as to why one of ordinary skill in the art would modify Zak to include the above-cited claim limitation. There is no discussion in Zak of there being any problems related to the lack of accurately detonating an explosive device remotely. Instead, Zak is interested in remotely activating a device that is free from problems that may arise from RF interference or other interference. Providing remote actuation of an explosive device is immaterial to overcoming these problems. The Examiner must provide objective evidence as to why one of ordinary skill in the art would modify Zak to include the above-cited claim limitation. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner has not provided such objective evidence. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 7 and 16. *Id.*

F. Claims 8, 9, 17 and 18 are patentable over Kaje.

1. Kaje does not teach or suggest the following claim limitations.

Appellant respectfully asserts that Kaje does not teach or suggest "a laser light actuation system for remotely and selectively actuating a function of a known electromechanical gate" as recited in claim 8 and similarly in claim 17. The Examiner cites claim 1, line 2 of Kaje as teaching the above-cited claim limitation.

Office Action (12/20/2005), page 6. Appellant respectfully traverses and asserts that Kaje (U.S. Patent No. 6,897,765²) (hereinafter "Kaje 2") instead teaches remotely activating a doorbell. The Examiner must provide a basis in fact and/or technical reasoning to support his interpretation that remotely activating a doorbell is equivalent to actuating an electromechanical gate. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990); *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Instead, the Examiner is simply relying upon his own subjective opinion which is insufficient to establish a *prima facie* case of obviousness in rejecting claims 8 and 17. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

In response to the above argument, the Examiner responds by citing the Abstract of originally filed patent application to Kaje (U.S. Publication No. 2003/0122665) which includes the following language:

A remote control device when actuated by a user transmits a visually perceptible signal to a sensor associated with a doorbell, or any device compatible with the remote/sensor apparatus (e.g. garage door, spot-light, etc. Office Action (12/20/2005), page 12.

However, Kaje 2 does not include such language. In fact, Kaje 2 specifically deleted such language from the application as filed and specifically limited the application to be directed to a remote control device when actuated by a user transmitted by a visually perceptible coded signal to a sensor associated with a doorbell which receives the signal and causes activation of the doorbell as described. Abstract.

² U.S. Publication No. 2003/0122665 issued as U.S. Patent No. 6,897,765. Since U.S. Publication No. 2003/0122665 issued as U.S. Patent No. 6,897,765, the Examiner should be citing to U.S. 6,897,765. Appellant will address the rejections to claims 8, 9, 17 and 18 from the standpoint of U.S. Patent No. 6,897,765 and not from the standpoint of U.S. Publication No. 2003/0122665.

Further, the Examiner responds by citing claim 1, lines 2-4 of originally filed patent application to Kaje (U.S. Publication No. 2003/0122665) which includes the following language:

Any supported and compatible equipment (e.g., door-bell ringer, automatic door, automatic barrier for buildings, machine, spot light).
Office Action (12/20/2005), page 12.

However, Kaje 2 does not include such language. In fact, Kaje 2 specifically deleted such language from the application as filed and specifically limited claim 1 to be directed to a remotely activated doorbell system for a building having a door and a doorbell. Column 4, lines 28-29.

Hence, Kaje is limited to a doorbell as Kaje amended its application, including its claims, to be limited to a doorbell. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 8 and 17, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Appellant further asserts that Kaje does not teach or suggest "selectively produce an actuation signal in response to the known laser light signal to selectively actuate such an electromechanical gate operatively associated with the laser receiver module" as recited in claim 8 and similarly in claim 17. The Examiner cites lines 4-7 of the abstract, paragraph [0017] and lines 1-5 of claim 1 of Kaje as teaching the above-cited claim limitation. Office Action (12/20/2005), page 5. Appellant respectfully traverses and asserts that Kaje 2 instead teaches a sensor that has multiple settings which control operation of the doorbell such that any, specified, or no remote devices may operate the doorbell depending on the setting that is selected on the sensor. Abstract. Kaje 2 further teaches a sensor means connected to a doorbell, where the sensor means receives a coded laser beam signal and upon receiving the signal, causes activation of the doorbell. Claim 1. Hence, Kaje 2 teaches activating a

doorbell upon receipt of a laser beam signal. The Examiner must provide a basis in fact and/or technical reasoning to support his interpretation that remotely activating a doorbell is equivalent to actuating an electromechanical gate. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990); *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Instead, the Examiner is simply relying upon his own subjective opinion which is insufficient to establish a *prima facie* case of obviousness in rejecting claims 8 and 17. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

2. Appellant challenges Official Notice with respect to claims 8 and 17

The Examiner acknowledges that Kaje does not teach the limitation of "wherein the laser receiver module is adapted to be positioned in use in a selectively concealed location known to a user" as recited in claim 8 and similarly in claim 17. Paper No. 3, page 6. The Examiner states:

It is well known in the art to conceal a security device in a location only known to individuals who are permitted entry, to prevent tampering of the device and the knowledge of the existence of the device in defeating the security device. Office Action (12/20/2005), page 6.

Appellant respectfully traverses the implied assertion that it is well known in the art to have a laser receiver module adapted to be positioned in use in a selectively concealed location known to a user. The Examiner, in response to Appellant's request to provide a reference that teaches having a laser receiver module adapted to be positioned in use in a selectively concealed location known to a user pursuant to M.P.E.P. §2144.03, cited [0006] and [0024] of Perkins (U.S. Publication No. 2002/0124779). Office Action (12/20/2005), pages 12-13.

The Examiner though has not provided any motivation for modifying Kaje with Perkins to include the aspect of adapting the laser receiver module to be

positioned in use in a selectively concealed location known to a user, as recited in claim 8 and similarly in claim 17. In order to establish an obviousness rejection, the Examiner must present some suggestion or motivation to modify Kaje with Perkins to include the aspect of adapting the laser receiver module to be positioned in use in a selectively concealed location known to a user, as recited in claim 8 and similarly in claim 17. M.P.E.P. §2143. Since the Examiner has not presented any motivation for modifying Kaje with Perkins, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 8 and 17. M.P.E.P. §2143.

Further, as stated above, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. M.P.E.P. §2143.01. In order to rely on a reference as a basis for rejection under 35 U.S.C. §103(a), the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992). The Examiner cites the Kaje and Perkins references in his rejection of claims 8 and 17 under 35 U.S.C. §103(a). The Perkins reference addresses the problem of having a more secure safe which is adapted to be installed in a location which is easy to access and yet which remains camouflaged from normal view. [0006]. Appellant, on the other hand, addresses the problem of providing a remote laser actuation system that accommodates controlled duration of actuation of the subject device, e.g., feeder. Column 3, lines 18-25. Hence, the Perkins reference is not in the same field as Appellant's endeavor and is not reasonably pertinent to solving the problem of providing a remote laser actuation system that accommodates controlled duration of actuation of the subject device, e.g., feeder. As a result, the Perkins reference is not an analogous prior art and the Examiner has not established a *prima facie* case of obviousness in rejecting claims 8 and 17. M.P.E.P. §2141.01; 2143.01.

Further, as stated above, the Examiner cites to [0006] and [0024] of Perkins as teaching a laser receiver module adapted to be positioned in use in a selectively concealed location known to a user. Appellant respectfully traverses. Perkins instead teaches the problem of having a more secure safe which is adapted to be installed in a location which is easy to access and yet which remains camouflaged from normal view. [0006]. Perkins further teaches that for security purposes, the key switch should be located in a hidden location away from the safe. [0024]. There is no language in the cited passages that teaches a laser receiver module adapted to be positioned in use in a selectively concealed location known to a user. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 8 and 17, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

3. Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 8 and 17.

As stated above, most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references

themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Kaje does not teach the limitation of "wherein the laser receiver module is adapted to be positioned in use in a selectively concealed location known to a user" as recited in claim 8 and similarly in claim 17. Office Action (12/20/2005), page 6. The Examiner states that it would have been obvious to modify Kaje to include the above-cited claim limitation "to increase the security of the secured areas by preventing authorized individuals from having knowledge of the security device and tampering with it." Office Action (12/20/2005), pages 6-7. In response to Appellant's request for the Examiner to specify a source of motivation, the Examiner simply states that it "is well known to one of ordinary skill in the art." Office Action (12/20/2005), page 13. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

While the source of motivation may be found from the knowledge of one of ordinary skill in the art, the Examiner is still required to provide evidence of such knowledge. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). That is, the Examiner must provide evidence that one of ordinary skill in the art would modify Kaje to have a laser receiver module adapted to be positioned in use in a selectively concealed location known to a user. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 8 and 17. *Id.*

4. Claims 9 and 18 are patentable over Kaje for at least the reasons that claim 8 and 17 are patentable over Kaje.

Claim 9 depends from independent claim 8 and hence is patentable over Kaje for at least the reasons that claim 8 is patentable over Kaje as discussed above. Further, claim 18 depends from independent claim 17 and hence is patentable over Kaje for at least the reasons that claim 17 is patentable over Kaje as discussed above.

5. Appellant challenges Official Notice with respect to claims 9 and 18.

The Examiner acknowledges that Kaje does not teach the limitation of "a radio module adapted to produce a known radio signal; and a radio receiver module adapted to receive and detect the known radio signal and selectively produce an actuation signal in response to the known radio signal to selectively actuate a barrier device operatively associated with the radio receiver module and adapted to be selectively actuated in response to the detection of the known radio signal by the radio receiver module in order to enable the laser receiver module to receive the known laser light signal" as recited in claim 9 and similarly in claim 18. Office Action (12/20/2005), page 7. The Examiner states:

It is well known in the art to utilize multiple barrier gates and provide separate modes of identification for entry for each barrier gate in high-security areas, to prevent unauthorized entry, and it is well known in the art to utilize radio modules and receivers to actuate barrier devices (such as in garage door or entry gate openers). Office Action (12/20/2005), page 7.

Appellant respectfully traverses the implied assertion that it is well known in the art to have a radio module adapted to produce a known radio signal; and to have a radio receiver module adapted to receive and detect the known radio signal and selectively product an actuation signal in response to the known radio signal to selectively actuate a barrier device operatively associated with the radio receiver module and adapted to be selectively actuated in response to the detection of the known radio signal by the radio receiver module in order to enable the laser receiver module to receive the known laser light signal. The Examiner, in response to

Appellant's request to provide a reference that teaches the above-cited claim limitations, cites column 4, lines 45-47 and column 6, lines 5-11 of Stewart et al. (U.S. Patent No. 6,405,496) (hereinafter "Stewart") as well as cites column 1, lines 13-26 of Clark et al. (U.S. Patent No. 4,847,542) (hereinafter "Clark"). Office Action (12/20/2005), page 13.

The Examiner though has not provided any motivation for modifying Kaje with either Stewart or Clark to include the limitations of claims 9 and 18. In order to establish an obviousness rejection, the Examiner must present some suggestion or motivation to modify Kaje with Stewart or Clark to include the limitations of claims 9 and 18. M.P.E.P. §2143. Since the Examiner has not presented any motivation for modifying Kaje with Stewart or Clark, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 9 and 18. M.P.E.P. §2143.

Further, as stated above, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. M.P.E.P. §2143.01. In order to rely on a reference as a basis for rejection under 35 U.S.C. §103(a), the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992). The Examiner cites the Kaje, Stewart and Clark references in his rejection of claims 9 and 18 under 35 U.S.C. §103(a). The Stewart reference addresses the problem of having multi-story condominium or apartment buildings with heights of three or more stories, containing multiple floors or 'levels' of separate dwelling units, and which have at least semi-private pathways between vehicle garage or parking areas and each dwelling unit. Column 1, lines 36-46. Further, the Clark reference addresses the problem of finding additional uses (other than opening or closing a garage door) for the two buttons now included within the transmitted unit of a garage door operator system. Column 1, lines 6-50.

Appellant, on the other hand, addresses the problem of providing a remote laser actuation system that accommodates controlled duration of actuation of the subject device, e.g., feeder. Column 3, lines 18-25. Hence, the Stewart and Clark references are not in the same field as Appellant's endeavor and are not reasonably pertinent to solving the problem of providing a remote laser actuation system that accommodates controlled duration of actuation of the subject device, e.g., feeder. As a result, the Stewart and Clark references are not an analogous prior art and the Examiner has not established a *prima facie* case of obviousness in rejecting claims 9 and 18. M.P.E.P. §2141.01; 2143.01.

Further, as stated above, the Examiner cites to column 4, lines 45-47 and column 6, lines 5-11 of Stewart as teaching the above-cited claim limitations. Office Action (12/20/2005), page 13. Appellant respectfully traverses. Stewart instead teaches that the term garage as used herein may include an enclosure with a roof, a rear wall, opposed sidewalls and a door for the vehicle entrance. Column 4, lines 45-47. Stewart further teaches that a resident of a dwelling unit and having a garage at a level has a pathway between the garage and the dwelling unit which includes a corridor, a foyer and an elevator. Column 6, lines 8-11. There is no language in the cited passages that teaches a radio module adapted to produce a known radio signal. Neither is there any language in the cited passages that teaches a radio receiver module adapted to receive and detect the known radio signal and selectively produce an actuation signal in response to the known radio signal to selectively actuate a barrier device operatively associated with the radio receiver module and adapted to be selectively actuated in response to the detection of the known radio signal by the radio receiver module in order to enable the laser receiver module to receive the known laser light signal. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 9 and 18, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, as stated above, the Examiner cites to column 1, lines 13-26 of Clark as teaching the above-cited claim limitations. Office Action (12/20/2005), page 13. Appellant respectfully traverses. Clark instead teaches that an automatic garage door opener typically includes a radio frequency transmitter which a user may take with him in the automobile when leaving the garage which generates a radio frequency signal for actuation of the garage door operator. Column 1, lines 14-18. There is no language in the cited passages that teaches a radio receiver module adapted to receive and detect the known radio signal and selectively produce an actuation signal in response to the known radio signal to selectively actuate a barrier device operatively associated with the radio receiver module and adapted to be selectively actuated in response to the detection of the known radio signal by the radio receiver module in order to enable the laser receiver module to receive the known laser light signal. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 9 and 18, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

6. Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 9 and 18.

As stated above, most if not all inventions arise from a combination of old elements. See *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See *Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same

problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Kaje does not teach the limitation of "a radio module adapted to produce a known radio signal; and a radio receiver module adapted to receive and detect the known radio signal and selectively product an actuation signal in response to the known radio signal to selectively actuate a barrier device operatively associated with the radio receiver module and adapted to be selectively actuated in response to the detection of the known radio signal by the radio receiver module in order to enable the laser receiver module to receive the known laser light signal" as recited in claim 9 and similarly in claim 18. Office Action (12/20/2005), page 7. The Examiner states that it would have been obvious to modify Kaje to include the above-cited claim limitation "to provide higher levels of authorization protection for high-security areas and reduce the risk of unauthorized intrusion, with each successive entry point enabled only upon successful passage from the previous entry point." Office Action (12/20/2005), page 7. In response to Appellant's request for the Examiner to specify a source of motivation, the Examiner simply states that it "is well known to one of ordinary skill in the art." Office Action (12/20/2005), page 13. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

While the source of motivation may be found from the knowledge of one of ordinary skill in the art, the Examiner is still required to provide evidence of such knowledge. *In re Lee*, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002). That is, the Examiner must provide evidence that one of ordinary skill in the art would modify Kaje to include the limitations of claims 9 and 18. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 9 and 18. *Id.*

Further, the Examiner's motivation ("to provide higher levels of authorization protection for high-security areas and reduce the risk of unauthorized intrusion, with each successive entry point enabled only upon successful passage from the previous entry point") does not provide reasons, as discussed further below, that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Kaje to include the claim limitation of claims 9 and 18. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 9 and 18. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Kaje addresses the problem of reducing the use of alternative means, such as using an automobile horn, to get the attention of people who are inside a house thereby eliminating this type of undesirable noise from neighborhoods. Column 3, lines 8-12. Kaje teaches a remote control device that when actuated by a user transmits a visually perceptible coded signal to a sensor associated with a doorbell which receives the signal and causes activation of the doorbell. Abstract.

The Examiner's motivation is to provide higher levels of authorization protection for high-security areas and reduce the risk of unauthorized intrusion, with each successive entry point enabled only upon successful passage from the previous entry point. Office Action (12/20/2005), page 7. The Examiner's motivation does not

address as to why one of ordinary skill in the art would modify Kaje to include the above-cited claim limitations. There is no discussion in Kaje of there being any problems related to providing higher levels of authorization protection for high-security areas and reducing the risk of unauthorized intrusion. Instead, Kaje is interested in eliminating undesirable noise from neighborhoods that was previously used to get the attention of people who are inside a house. Providing higher levels of authorization protection for high-security areas and reducing the risk of unauthorized intrusion is immaterial to overcoming these problems. The Examiner must provide objective evidence as to why one of ordinary skill in the art would modify Kaje to include the above-cited claim limitation. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner has not provided such objective evidence. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 9 and 18. *Id.*

VIII. CONCLUSION

For the reasons noted above, the rejections of claims 1-18 are in error. Appellant respectfully requests reversal of the rejections and allowance of claims 1-18.

Respectfully submitted,

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CLAIMS APPENDIX

1. A laser light actuation system for remotely and selectively actuating a function of a known apparatus, the system comprising:

a laser module adapted to produce a known laser light signal suitable for transmission over a long distance; and

a receiver module adapted to receive and detect the known laser light signal and selectively produce an actuation signal in response to the known laser light signal to selectively actuate such an apparatus, the receiver module further comprising a timer operatively associated with the receiver module to selectively limit the time of actuation of such an apparatus in response to the laser light signal.

2. The laser light actuation system of claim 1, further comprising an electromechanical feeder operatively associated with the receiver module and adapted to be selectively actuated to release feed in response to detection of the known laser light signal by the receiver module.

3. The laser light actuation system of claim 1, wherein the laser module is adapted to produce a known, sparsely modulated laser light signal.

4. The laser light actuation system of claim 1, further comprising a telescopic sight operatively associated with the laser module to accommodate selective directing of the known laser light signal through use of the telescopic sight.

5. The laser light actuation system of claim 2, further comprising a telescopic sight operatively associated with the laser module to accommodate selective directing of the known laser light signal through use of the telescopic sight.

6. The laser light actuation system of claim 3, further comprising a telescopic sight operatively associated with the laser module to accommodate selective directing

of the known laser light signal through use of the telescopic sight.

7. The laser light actuation system of claim 1, further comprising a detonator operatively associated with the receiver module and adapted to be selectively actuated to detonate in response to detection of the known laser light signal by the receiver module.

8. A laser light actuation system for remotely and selectively actuating a function of a known electromechanical gate, the system comprising: a laser module adapted to produce a known laser light signal suitable for transmission over a long distance; a laser receiver module adapted to receive and detect the known laser light signal and selectively produce an actuation signal in response to the known laser light signal to selectively actuate such an electromechanical gate operatively associated with the laser receiver module and adapted to be selectively actuated in response to the detection of the known laser light signal by the laser receiver module; and wherein the laser receiver module is adapted to be positioned in use in a selectively concealed location known to a user.

9. The laser light actuation system of claim 8, further comprising: a radio module adapted to produce a known radio signal; and a radio receiver module adapted to receive and detect the known radio signal and selectively produce an actuation signal in response to the known radio signal to selectively actuate a barrier device operatively associated with the radio receiver module and adapted to be selectively actuated in response to the detection of the known radio signal by the radio receiver module in order to enable the laser receiver module to receive the known laser light signal.

10. A laser light actuation method for remotely and selectively actuating a function of a known apparatus, the method comprising the steps of: producing a

known laser light signal suitable for transmission over a long distance; receiving the known laser light signal; detecting the known laser light signal; producing an actuation signal to actuate such an apparatus selectively in response to the step of detecting the known laser light signal; and limiting the time of actuation of such an apparatus selectively in response to the laser light signal.

11. The laser light actuation method of claim 10, further comprising the step of releasing selectively feed in response to the step of producing an actuation signal.

12. The laser light actuation method of claim 10, wherein the step of producing a known laser light signal suitable for transmission over a long distance comprises the step of producing a known, sparsely modulated laser light signal suitable for transmission over a long distance.

13. The laser light actuation method of claim 10, further comprising the step of directing the known laser light signal selectively through use of a telescopic sight.

14. The laser light actuation method of claim 11, further comprising the step of directing the known laser light signal selectively through use of a telescopic sight.

15. The laser light actuation method of claim 12, further comprising the step of directing the known laser light signal selectively through use of a telescopic sight.

16. The laser light actuation method of claim 10, further comprising the step of detonating in response to the step of producing an actuation signal.

17. A laser light actuation method for remotely and selectively actuating a function of a known electromechanical gate, the method comprising the steps of: producing a known laser light signal suitable for transmission over a long distance;

receiving the known laser light signal at a selectively concealed location known to a user; detecting the known laser light signal; producing an actuation signal to actuate such an electromechanical gate selectively in response to the step of detecting the known laser light signal; and actuating the electromechanical gate selectively in response to the step of producing an actuation signal.

18. The laser light actuation method of claim 16, further comprising the steps of: producing a known radio signal; receiving the known radio signal; detecting the known radio signal; producing an actuation signal to actuate a barrier selectively in response to the step of detecting the known radio signal; and actuating the barrier selectively in response to the step of producing an actuation signal in order to enable the step of receiving the known laser light signal at the location designated by the user.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellant in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.